

**ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING  
IN THE MATTER OF ONTARIO REGULATION 268/10  
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,  
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF**

**ONTARIO PROVINCIAL POLICE  
AND  
PROVINCIAL CONSTABLE Ryan CHRISTIE, #11432**

**CHARGE:**

**DISCREDITABLE CONDUCT  
UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY**

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**DECISION WITH REASONS**

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**Before:** Superintendent Melissa Barron

**For the Prosecution:** Mr. Jason Kirsh  
Ontario Provincial Police

**Counsel for the Defence:** Mr. James Girvin  
Ontario Provincial Police Association

**Public Complainant:** Mr. Phillip Jones

**Hearing Date:** October 4 - 5, 2023

This decision is parsed into the following parts:

*PART I: OVERVIEW;*

*PART II: THE HEARING;*

*PART III: ANALYSIS and FINDINGS;*

*PART IV: DECISION*

## **PART I: OVERVIEW**

### **Count 1: Discreditable Conduct**

#### **Allegations of Misconduct**

Provincial Constable (P/C) Ryan Christie, #11432 is alleged to have committed Discreditable Conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police (OPP), contrary to Section 2(1)(a)(xi), and that he used profane, abusive or insulting language or was otherwise uncivil to a member of the public, contrary to Section 2(1)(a)(v) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

#### **Particulars of Allegation (amended)**

For the past several years, Mr. Jones and Mr. Franklin have been involved in legal proceedings regarding the ownership of property, pertaining to a mixed-use, 80 acre farm in Hastings Township. OPP officers have been requested to attend this location on a number of past occasions in response to this tenuous situation. On or about August 11, 2021, P/C Christie commenced an investigation into an allegation that Mr. Jones had stolen hay from this rural property, which he was currently renting. On or about September 27, 2021, P/C Christie attended this property and arrested and charged Mr. Jones for Theft Under \$5000 334(b) of the Criminal Code (CC). P/C Christie committed the following misconduct:

- Mr. Jones noticed a police cruiser parked up the road from his driveway. He walked out with the intention of inquiring as to why P/C Christie was at this location. Given his prior encounters with Mr. Franklin, and his latest encounter with the OPP, he chose to wear a GoPro video camera.
- P/C Christie exited the police cruiser and told Mr. Jones words to the effect of “*take your hands out of your pocket*” to which he complied. P/C Christie then asked, “*are you Phil Jones?*” He answered “*yes.*” P/C Christie asked, “*Do you own the property?*” He stated, “*I live here.*” P/C Christie re-asked the same question and Mr. Jones provided the same answer. Mr. Jones then asked why that was relevant.
- At that point, P/C Christie became extremely agitated. He stepped forward with clenched fists

and a clenched jaw and said *“You don’t see how it’s relevant? I ask you a simple question and it’s a simple fucking answer. I’m on the edge right now. You don’t want to fuck with me right now.”*

- P/C Christie again asked if he owned the property. Mr. Jones did not answer the question and asked P/C Christie for his name. P/C Christie replied *“Constable Christie, 11432. Put in the complaint, I’m waiting for it.”*
- Mr. Jones had never previously met P/C Christie in person, however, on or about July 6, 2021, had spoken to him on the phone regarding Mr. Franklin seizing his vehicles. Therefore, Mr. Jones assumed P/C Christie was aware of his contentious history with Mr. Franklin and the ongoing civil disputes surrounding the property.
- P/C Christie then stepped closer and in a loud and aggressive tone, said, *“You want to take a swing at me? Do it! It’s 20 years of dealing with these complaints. You are not going to answer my questions? You are not going to answer my questions?”* Mr. Jones replied, *“Well, I didn’t call you here.”* P/C Christie then ordered Mr. Jones to turn around and put his hands behind his back, to which he complied. Mr. Jones was then handcuffed and arrested for theft.
- P/C Christie started to search Mr. Jones but when he observed the GoPro camera on his chest he stopped and put him (handcuffed and unsearched) in the rear of the police cruiser.
- As Mr. Jones was being put in the police cruiser, P/C Christie said, *“Don’t worry, you aren’t in any danger, another officer will be here shortly.”* Given P/C Christie’s words and demeanour, the comment intimidated Mr. Jones and made him feel nervous, as he wondered why he would not be safe in police custody.
- While Mr. Jones was sitting in the back seat he could hear P/C Christie talking to himself, saying *“Mr. Camera, eh? Think I care?”* P/C Christie then asked Mr. Jones about the battery life on his camera.
- On or about October 6, 2021, as per Mr. Jones’ release conditions, he attended the Campbellford Detachment to be fingerprinted and photographed. P/C Christie was the officer scheduled to complete this process. However, given P/C Christie’s previous threatening and intimidating behaviour, Mr. Jones was afraid to be alone with P/C Christie and requested a different officer.
- Mr. Franklin made the theft allegation seven weeks prior to Mr. Jones’ arrest. Mr. Jones was not aware of the allegation or that he was the subject of an investigation. He was never questioned or afforded the opportunity to provide an explanation and/or the corroborating legal documentation.
- Mr. Jones was unjustly arrested, handcuffed and locked in the back of a police cruiser. The encounter, along with the stress of being charged criminally, has caused Mr. Jones considerable anxiety.
- On October 25, 2021, almost one month after his arrest and two days before his scheduled court appearance, Mr. Jones received a call from Sgt. Davidson advising him that the charges were no longer proceeding and that his fingerprints would be destroyed.

- The Professional Standards Unit (PSU) investigator reviewed the video supplied by Mr. Jones. It is slightly less than 23 minutes in length and accurately captures the incident, corroborating Mr. Jones' evidence.

## **Count 2: Unnecessary or Unlawful Exercise of Authority**

### **Allegations of Misconduct**

P/C Christie is alleged to have committed Unlawful or Unnecessary Exercise of Authority, in that he without good and sufficient cause did make an unlawful or unnecessary arrest contrary to Section 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

### **Particulars of Allegation**

For the past several years, Mr. Jones and Mr. Franklin have been involved in legal proceedings regarding the ownership of property, pertaining to a mixed-use, 80 acre farm in Hastings Township. OPP officers have been requested to attend this location on a number of past occasions in response to this tenuous situation. On or about August 11, 2021, P/C Christie commenced an investigation into an allegation that Mr. Jones had stolen hay from this rural property, which he is currently renting. On or about September 27, 2021, P/C Christie attended this property and arrested and charged Mr. Jones for Theft Under \$5000 (334(b) CC. P/C Christie committed the following misconduct:

- The *Criminal Code* states that an officer, in determining whether to arrest, shall consider the need to: secure a court appearance; secure and preserve evidence; establish identity; prevent continuance of the offence; protect life and property; and prevent breach of the peace. In this particular situation, none of the above mandatory considerations were a factor.
- The occurrence, as reported, was a civil matter between these two parties. P/C Christie was aware or ought to have been aware of the contentious property-related history between the Jones' and Mr. Franklin. A proper investigation would have afforded both parties the opportunity to provide statements and corroborating legal documentation for review.
- P/C Christie arrested Mr. Jones 48 days after Mr. Franklin reported the alleged theft. P/C Christie entered into the investigation on August 11, 2021. P/C Christie took statements from Mr. Franklin and his wife, and then cleared the occurrence as 'Jones charged accordingly'. P/C Christie had already determined that he was going to charge Mr. Jones. During the ensuing 48 days, P/C Christie took no further investigative steps. P/C Christie did not provide Mr. Jones with an opportunity to respond to the allegation (who, prior to his September 27, 2021 arrest, was not aware of the investigation), and did not interview two independent witnesses until after Mr. Jones had been arrested and charged.
- Based on the evidence, P/C Christie's arrest of Mr. Jones was unnecessary and unlawful,

had he conducted a proper and full investigation.

P/C Christie knew or reasonably ought to have known his actions in this matter were both discreditable and unnecessary and unlawful.

## **Plea**

At the outset of the hearing on October 4, 2023, P/C Christie was not present, however he had provided instructions to counsel. On behalf of P/C Christie, Mr. Girvin entered a plea of guilty to Discreditable Conduct (Count 1) and not guilty to Unlawful or Unnecessary Exercise of Authority (Count 2).

## **Decision**

Based on clear and convincing evidence, I find P/C Christie guilty of Discreditable Conduct contrary to Section 2(1)(a)(xi) (and inclusive of Section 2(1)(a)(v)), of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

I find P/C Christie not guilty of Unlawful or Unnecessary Exercise of Authority contrary to Section 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

My reasons for the decision are as follows:

## **PART II: THE HEARING**

### ***Viva Voce Evidence***

The following is only a summary account of witness testimony, reproduced as it was given before the Tribunal. More detailed references to specific portions may be found within the Analysis section. Following the evidence in chief, the public complainant was asked whether he wished to add additional details to his own testimony, or ask questions of the witnesses, and he declined to do so.

#### **Prosecution Witness and Public Complainant – Mr. Phillip Jones** ***Evidence in Chief***

Mr. Jones testified the property in question is a 100-acre farm owned and operated by him and his mother Linda Jones. He stated that Ms. Jones had owned the property since 2003, but in 2017, due to financial difficulties, it was arranged that Mr. Elwood Quinn would temporarily carry the mortgage for up to 8 years, while allowing Ms. Jones full use of the property, and giving her

exclusive right to repurchase it. Following that arrangement, the relationship deteriorated, and Mr. Quinn employed his son-in-law Mr. Hugh Franklin to evict Ms. Jones. Over the next few years, he attempted to remove Ms. Jones from the property by *“any means possible”*. There followed several calls to the OPP and appearances in many different courts, with various court orders granted on either side. He stated that in the fall of 2021 the Joneses successfully defended against their removal and won the right to repurchase the property, which was effected in November 2021. Mr. Jones described the dealings with Mr. Franklin as *“contentious”*, testifying that police had been called on multiple occasions by both parties, in an attempt to mediate the issues, stating that both sides had been charged in relation to the property (giving examples of both provincial and federal offences). Mr. Jones stated that they *“grow hay on our farm, about 55 acres or so, we have done so for the entirety of our residing there, for the last 20 years, we’ve seeded, cut, harvested, baled and maintained those hay crops ourselves with the help of neighbours who’ve been contracted to help harvest that hay”*. Mr. Jones described a document of purchase and sale from 2017 between Ms. Jones and Mr. Quinn, which gave Ms. Jones *“full use of the property”* for a period of eight years, and said they (the Joneses) believed it to be their hay, *“as it always had been”*. In August 2021, they had sought out a third party, Mr. O’Brien, to harvest the hay. During the day of baling, Mr. Franklin arrived at the property and told Mr. O’Brien to *“cease and desist his activities, that he was trespassing, and that he would be essentially charged”*. Mr. Jones stated he called the police, as there was a court order preventing Mr. Franklin from attending the property. On that date, Mr. Franklin stated the Joneses were *“squatters, people who were there illegally, that he was the owner of the property, and it was his hay.”* It was also alleged that on this date, Ms. Jones assaulted Mr. Franklin. On September 27, 2021, he was aware that Mr. Franklin was planning to attend the property again, accompanied by police. It was still Mr. Jones’ position that Mr. Franklin was prohibited from attending the property, so he intended to obstruct access to Mr. Franklin. He noticed that an OPP cruiser was parked on the roadway, so he walked down to greet the officer. Mr. Jones stated he was wearing a GoPro camera for protection and documentation as the dealings *“had become so contentious and at times potentially violent, especially surrounding Mr. Franklin’s attendances”*. The video recording<sup>1</sup> of his interaction with P/C Christie was tendered through Mr. Jones. Mr. Jones stated he was shaken and nervous by the interaction and described P/C Christie as verbally aggressive and physically intimidating. He testified that P/C Christie was initially agitated, angry, aggressive, and violent, but after he placed Mr. Jones under arrest and noticed the GoPro, his demeanour changed. Mr. Jones stated that he was never questioned about the theft of hay prior to his arrest, and on that day, he was released with a Form 10 with Undertaking<sup>2</sup>. The police did not ask about, or take photos of, the hay that day. He attended Cobourg OPP detachment for fingerprinting and when he learned P/C Christie was to process him, he requested a different officer because he did not want to be alone with him while being fingerprinted. The day before his first court appearance, he received a call from Sgt. Davidson

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<sup>1</sup> Exhibit 9

<sup>2</sup> Exhibit 10

who asked if he had planted and grown the hay. When he replied yes, Sgt. Davidson thanked him and said the charges were being dropped.

#### *Cross Examination*

Mr. Jones confirmed that during the incident in question, neither he nor his mother owned the property, and that he was never considered an owner until the repurchase of the property. He was asked about being given his rights to counsel and replied that he exercised his right to remain silent. He also confirmed he heard he was being arrested for theft of hay, but stated he *"wouldn't say at any point I understood the process of what was happening, which is why I remained silent"*. He confirmed that he knew Mr. Franklin was asserting some dispute over the hay, but was not aware that a report had been made to the police or that he was being investigated. Mr. Jones confirmed that on September 24, 2021, Mr. Franklin had given notice of his intention to attend on September 27, 2021, to remove the hay. Mr. Jones stated that when he spoke to Sgt. Davidson, it was his first contact with him regarding the hay, that the only enquiry was whether he had planted the hay, and that Sgt. Davidson had not provided any reason why the charges were going to be dropped. Mr. Jones stated he had shown an interim court decision to P/C Christie's colleague that required everyone maintain status quo regarding the property and not make any changes to it.

#### *Prosecution Witness P/C Colin Foster*

##### *Evidence in Chief*

He was dispatched to the property on September 27, 2021, to keep the peace. He had attended previously to keep the peace or for unwanted person complaints between the Joneses and the property owner. While he was enroute to the address, P/C Christie had advised him that he had grounds to arrest Mr. Jones, and that he (Jones) was walking up to his cruiser. P/C Christie was waiting down the road for P/C Foster to arrive so they could attend the call together, and upon arrival, Mr. Jones was in the rear of P/C Christie's cruiser. Everything was calm when he arrived. P/C Christie advised him that as Mr. Jones was walking up to him, he had his hands in his pockets, he asked him numerous times to remove his hands from his pockets and he didn't. P/C Christie said he'd had to swear at Mr. Jones to take his hands out of his pockets and had placed him under arrest before he got there. He recalled Mr. Jones showing him a document – he testified he did not remember what the details were, but Mr. Jones had provided it to keep the property owner off the property.

#### *Cross Examination*

P/C Foster confirmed that when he looked at the document provided by Mr. Jones, he told Mr. Jones that he did not understand it and that it didn't make sense to him. He had no specific recollection of any prior documentation beyond the issue of who was allowed on the property. On that date, he was aware that Mr. Jones was not the owner of the property. He confirmed he had no knowledge of any evidentiary basis for Mr. Jones' arrest.



Prosecution Witness S/Sgt Davidson

*Evidence in Chief*

S/Sgt Davidson testified that at the time of the incident, he was P/C Christie's platoon supervisor. He was aware that P/C Christie had been assigned the incident regarding the hay and the alleged assault of Mr. Franklin by Ms. Jones, and had been monitoring it to ensure it was completed in a timely manner. On August 11, 2021, P/C Christie advised that he was taking statements and would tell (then) Sgt. Davidson if he needed anything. S/Sgt Davidson became aware later in the month that the investigation had not been completed - P/C Christie had been away from work – so at the beginning of September, he spoke to P/C Christie and addressed timely investigations, directing him to make sure that the investigation moved forward. On September 23, 2021, while off-duty, (then) Sgt Davidson received an email from S/Sgt Royer noting that the investigation had not yet been completed, that it had been brought to S/Sgt Royer's attention through PSU, and that *"there was a need to move that along and to monitor it a little bit more"*. When back on duty on September 27, 2021, he had a conversation with P/C Christie, advising him that the investigation needed to be completed. On that same date, P/C Christie texted him, asking if he had any dates for first appearances. Some time later that day, P/C Christie advised (then) Sgt. Davidson of his negative interaction with Mr. Jones, stating he *"lost his cool"* after becoming frustrated. S/Sgt. Davidson testified that he told P/C Christie that swearing was unacceptable and that he would be advising the Detachment Commander, Inspector Martin. Inspector Martin asked (then) Sgt. Davidson to ascertain the need for Mr. Jones' arrest as opposed to proceeding by summons. S/Sgt Davidson testified that P/C Christie stated he'd arrested Mr. Jones *"due to safety concerns for the witness and victim"*, saying *"he was aware that the male (Mr. Jones) had previously assaulted Hugh Franklin and wanted to have conditions to protect the witness"*. Following that day, (then) Sgt. Davidson directed P/C Christie to obtain a Crown consult on both the theft and assault matters, and P/C Christie followed up with the court officer as per the process. P/C Christie subsequently went off work again. On October 6, 2021, (then) Sgt. Davidson also sent an email to the Crown requesting a consult. That same day he *"became aware from S/Sgt Royer that through the course of another PSU investigation, that the colour of right to that property had actually been determined to be in the Joneses' favour. Then when I looked at the totality of that occurrence, with that information, as well as I placed a phone call to Mr. Jones to confirm that they had actually planted the hay themselves, I determined that the colour of right... was with the Joneses, so I advised Mr. Jones I would be withdrawing that charge"*. S/Sgt Davidson confirmed that the Crown consult did not occur. He testified that *"when I looked at the totality of the evidence and reading the occurrence reports and through consultation with OPP Legal, I came to the conclusion that I believed this occurrence could be classified as being civil in nature as opposed to criminal"*. S/Sgt Davidson was asked if he'd previously been aware of Mr. Jones, and responded that there were frequent occurrences at the property between Mr. Jones and Mr. Franklin, including disputes over entitlement to property, landlord/tenant type disputes, a dangerous driving complaint, and an assault complaint. S/Sgt Davidson was provided a copy of the General Occurrence report and



noted that the report articulated both the theft and assault allegations from August 2021, stating it articulates *“more of the assault in my mind”*. It was “cleared by charge”, meaning that *“in at least one case, one of the allegations, he has formed grounds in his mind for a charge to be laid”*. S/Sgt Davidson was asked why he asked Mr. Jones whether he’d planted the hay and responded that *“in doing so, it would clear up or would contribute to the civil nature of the occurrence versus the criminal nature... I would expect that in this type of a case there would be that conversation prior to arrest with an accused, yes. Now I will say that it doesn’t happen in every occurrence”*. He clarified by saying that if it’s a theft case with colour of right to be determined, then *“I would want to be digging in a little bit further, and you can’t dig in further to colour of right unless you’re speaking to both sides”*. S/Sgt Davidson was asked about various documents compelling a person to attend court and he noted that a Form 10 enables an officer to place an accused on conditions to protect the safety of a victim or witness. S/Sgt Davidson testified that he attempted to access P/C Christie’s notes to review them but was unable to locate them.

#### *Cross Examination*

S/Sgt Davidson confirmed that P/C Christie was away from the workplace between 13 – 29 August 2021. He testified that he spoke to P/C Christie on September 8, 2021, regarding notebook issues and investigations, including the Jones’ investigation, but it was a non-disciplinary meeting, and confirmed there were no disciplinary steps taken regarding the incident, prior to the public complaint. He confirmed that on September 15, 2021, he received an email from Inspector Martin referencing the theft investigation. On September 20, 2021, the incomplete General Occurrence report appeared in his approval list and was sent back to P/C Christie for additional work. He did not recall if P/C Christie was at work at that time. On September 23, 2021, he received an email regarding the incident from S/Sgt Royer, who had in turn received a call from a PSU investigator. On September 27, 2021, he spoke to P/C Christie at shift prep, saying he’d been made aware by S/Sgt Royer that the investigation had not been completed, and needed to be done so as soon as possible. On October 4, 2021, he received an email from Inspector Martin who was requesting a Crown consult on the matter, to determine whether or not there was a reasonable prospect of conviction and whether the charge should go ahead. S/Sgt Davidson testified that on October 6, 2021, he directed P/C Christie to arrange a Crown consult and also directed him not to arrest Ms. Jones regarding the assault. On that date he received a text from P/C Christie who referenced his improper language and conduct during the incident, and also his personal health, expressing that he had *“come back too early”* (believed to reference a previous health absence) and that he knew he would eventually *“lose his shit on someone”*. On that same day, S/Sgt Davidson spoke to P/C Christie and reached out for wellness supports on his behalf. Also on October 6, 2021, *“the S/Sgt provided me information that as OPP Legal - which was revealed through a PSU investigation into another officer in relation to the Joneses - that the colour of right to that property would reside with the Joneses”*. He confirmed he did not independently verify the information or review any materials from the

other PSU investigation. On October 18, 2021, (then) Sgt. Davidson wrote an email to the Crown with a synopsis of the event, seeking an opinion on the issue of colour of right and reasonable prospect of conviction. However, on October 25, 2021, after looking at everything and in conversation with other people, he decided the Crown consult was not necessary. S/Sgt Davidson testified that he made the determination not to proceed with charges based on the information from S/Sgt Royer, and the entire occurrence, looking at statements and all the entries. He stated at some point after he spoke to Mr. Jones, he did advise Mr. Franklin that the charges were not going ahead. The General Occurrence and Supplementary Occurrence reports<sup>3</sup> were tendered through S/Sgt Davidson. S/Sgt Davidson testified that he did not specifically recall viewing the documents referenced in the report relating to the ongoing disputes and eviction, in making his determination, but stated they were provided to OPP Legal, per S/Sgt Royer. He confirmed he did not know when OPP Legal came into possession of the reports or when S/Sgt Royer was provided the information. He also confirmed that there is no indication that P/C Christie was provided any information that contradicted the information noted in the General Occurrence report. The General Occurrence report was completed on September 10, 2021, at which time it was completed as “cleared by charge”, although S/Sgt Davidson noted that grounds to charge Ms. Jones for assault also existed. S/Sgt Davidson also confirmed that he arrested Ms. Jones at some point after October 25, 2021, and did not take a statement from her prior to arresting her. S/Sgt Davidson testified that beyond asking Mr. Jones about planting the hay, he made no further investigation regarding the assertion that the Joneses had been growing hay for the past 18 years (at that time), and was not aware whether, as tenants, either Ms. Jones or Mr. Jones had any right to do any farming or other commercial activity on the property. S/Sgt Davidson’s belief that the colour of right belonged to the Jones’ was based on his conversation with S/Sgt Royer. He confirmed that he was unaware whether the determination by OPP Legal was simply their legal interpretation, or whether there were additional documents that contradicted the documents obtained by P/C Christie. S/Sgt Davidson was asked whether he could have pursued *PSA* neglect of duty charges if he believed that P/C Christie’s investigation was improper, and he responded that he would have sought the advice of his superiors. He stated he was aware there was a public complaint regarding P/C Christie’s conduct on September 27, and that PSU had the video and were aware of the occurrence. As far as he was aware the PSU investigation was in relation to P/C Christie’s conduct captured on the GoPro video. S/Sgt Davidson stated he made the determination that it was a civil matter based on the contract, the historic use of the property, and the ongoing breadth of the disputes between the parties. He agreed that it was possible that even though there was a civil contract, criminal conduct could still occur, and that if the Joneses had no lawful right to farm the hay, such contract would not be valid.

### *Redirect*

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<sup>3</sup> Exhibit 11

S/Sgt Davidson was asked to read the entire text message he received from P/C Christie on October 6, 2021. Regarding his arrest of Ms. Jones, he stated he had reviewed the documents and video, and formed reasonable and probable grounds. He took her statement under caution post-arrest.

### **PART III: ANALYSIS and FINDINGS**

Submissions were made by prosecution and defence counsel (the public complainant declined to make any), form part of the record, and are referenced as necessary below. The exhibits for this matter are listed in Appendix A.

In considering the testimony provided by the witnesses, I am aware of *Faryna v. Chorny*, 1951 CanLII 252 (BCCA), which is frequently referred to with respect to credibility of a witness, in which the Court of Appeal wrote – *The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognise as reasonable in that place and in those conditions.*

In assessing the testimony evidence, I am mindful both of credibility (whether the witness may be believed) and reliability (whether the evidence is an accurate account of events), but also whether the content is consistent with other evidence, and believable within the factual context of the matter. Having listened to and observed the three witnesses in this matter, I found each of them straightforward and direct in their answers. However, much of the evidence relied upon hearsay evidence – the existence of documents or second hand advice – which could have been more impactful and informative had it been directly provided to the Tribunal.

Section 84 of the *Police Services Act* states that misconduct must be proven on *clear and convincing evidence*. This standard of proof has been reaffirmed in several decisions following the Court of Appeal’s finding in *Jacobs v. Ottawa (Police Service)*, 2016 ONCA, which relied upon the Supreme Court’s earlier decision in *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC.

The burden of proof lies with the prosecution, which must prove its case on clear and convincing evidence. In his submissions, Mr. Girvin referenced *Santiago v. Peel Regional Police*, 2021 ONCPC, an appeal decision by the Ontario Civilian Police Commission (‘Commission’). In assessing the Hearing Officer’s analysis of the evidence, it noted *this standard [of proof] meant “weighty, cogent and reliable evidence upon which a trier of fact acting with care and caution can come to a fair and reasonable conclusion that the officer is guilty of misconduct.”*

## **Count 1 – Discreditable Conduct**

Defence counsel submitted *Rose, Arcand, Liburd, Correa, Fuller v. Toronto Police Service and Adam MacIsaac and Office of the Independent Police Review Director, 2018 ONCPC*, an appeal decision in which the Commission observed - *The test for Discreditable Conduct is an objective one to be considered from the viewpoint of a dispassionate, reasonable person fully apprised of the facts: Mulville and Azaryev and York Regional Police Service, 2017 CanLII 19496 (ONCPC). A technical breach of the law made in good faith would not be found by any reasonable person in the community to bring discredit upon that officer's police force.*

*Mulville* addressed the issue of Discreditable Conduct – both sections Section 2(1)(a)(xi), (act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police service) and Section 2(1)(a)(v) (profane, abusive or insulting language or otherwise uncivil to a member of the public) of the Code of Conduct. The Commission found *the objective test would require that the Hearing Officer place a dispassionate reasonable citizen fully apprised of the same facts and circumstances, aware of the applicable rules and regulations, in the same situation to assess whether the officer's language was discreditable. See: Toy v. Edmonton (City) Police Service, [2014] A.J. No. 1191 at para. 11.*

In this instance, the entire interaction between P/C Christie and Mr. Jones was captured on video<sup>4</sup>. P/C Christie was parked a distance down the roadway and as Mr. Jones approached him on foot, P/C Christie said – from inside the cruiser – “*Take your hands out of your pockets*”. Mr. Jones greeted P/C Christie saying “*Morning*”. P/C Christie again said, “*Take your hands out of your pockets.*” Mr. Jones asked, “*What's that?*” P/C Christie again said “*Take your hands out of your pockets. Are you Phil Jones?*” Mr. Jones replied, “*Yes I am*”. P/C Christie then exited the cruiser and said for a fourth time - “*Hands out of your pockets*” to which Mr. Jones replied “*Sure*”.

P/C Christie asked, “*Why are you coming towards me?*” and Mr. Jones responded “*I'm just wondering what's going on, why you're sitting at the end of the road here*”. P/C Christie asked, “*Do you own the property?*” Mr. Jones replied, “*I live here*”. Again, he was asked “*Do you own the property?*” and provided the same answer. P/C Christie asked him for a third time and Mr. Jones responded “*I don't see how that's relevant*”. At this point P/C Christie approached Mr. Jones with clenched fists and said, “*You don't see how it's relevant? I asked you a question. It's a fucking simple answer, alright? I'm on edge right now, you don't want to fuck with me, okay? Do you own the property?*”

Mr. Jones then asked, “*What's your name?*” P/C Christie replied “*Constable Christie. 11432. Put the complaint in. I'm waiting for it. Alright? What are you gonna do? You're gonna take a swing*

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<sup>4</sup> Exhibit 9

*at me? You're gonna take a swing at me? Do it!"* At this point it is clear, on camera, that Mr. Jones has moved backwards away from P/C Christie. P/C Christie then asked *"Do you know who I am?"*. Mr. Jones asked if he was the officer he *"had reported my Airstream stolen to"*, and P/C Christie nodded and said *"Twenty years on the job buddy, dealing with this stuff. Okay? Dealing with your complaints. I asked you a simple question, and you can't see why it's relevant"*. Mr. Jones pointed out *"I didn't call you today, so I don't know why you're here"* and P/C Christie asked *"Why is it not relevant? You're going to answer my question?"* Mr. Jones responded *"No"*. P/C Christie then said, *"You're not going to answer my question"*. Mr. Jones again said *"No"*.

At that point P/C Christie told Mr. Jones to turn around, put his hands behind his back and advised him he was under arrest for theft. When asked of what, P/C Christie responded, *"Of hay"*. Mr. Jones asked, *"You have evidence of this?"* and P/C Christie answered *"Yes I do"*. As he escorted Mr. Jones to the cruiser, P/C Christie said *"Don't worry, another officer will be by shortly, so you're okay. You're not in any danger"*. Mr. Jones responded, *"Thank you"*. Prior to placing Mr. Jones in the cruiser, P/C Christie asked if he had anything on him, and when he observed the GoPro and was told it was a camera, stated *"okay, that's fine, have a seat"* and placed Mr. Jones in the rear of the cruiser. Once seated in the front seat, P/C Christie commented *"Mr. Camera, eh? Think I care, that I'm on camera? 'Cause I don't."*

P/C Christie advised Mr. Jones that he was to be charged with theft and provided a caution/secondary caution and his rights to counsel. Mr. Jones replied *"yes sir"* when asked if he understood he was being charged with theft, but did not respond to the cautions. He then exercised his right to speak to counsel and P/C Christie called the lawyer on his cellphone. The handcuffs were removed when Mr. Jones spoke to his lawyer from the backseat of the cruiser, and they were not replaced. P/C Christie enquired about the battery life on the GoPro camera before explaining the release paperwork. When Mr. Jones got out of the cruiser to sign the paperwork, a second officer was present. Mr. Jones signed the paperwork and was released.

I find that the video provides clear and convincing evidence of misconduct. At the beginning of the interaction, P/C Christie was abrupt and defensive, repeatedly telling Mr. Jones to remove his hands from his pockets and questioning why he had approached the cruiser. It appears from the video that Mr. Jones did not initially hear P/C Christie's demands to remove his hands from his pockets, but ultimately did so, replying *"Sure"*. When Mr. Jones explained he was *"just wondering what's going on"*, P/C Christie offered no explanation, instead insisting on an answer to whether Mr. Jones owned the property. When Mr. Jones questioned why it was relevant, P/C Christie became aggressive, stepping towards Mr. Jones with clenched fists, raising his voice and swearing at him. P/C Christie's behaviour was belligerent, provocative and confrontational. In his testimony, Mr. Jones stated that he was *shaken and nervous* by the incident – I find that based on the video evidence, this is an entirely reasonable reaction to P/C Christie's behaviour.



In considering specifically Section 2(1)(a)(v) of the Code of Conduct (the use of profane, abusive or insulting language or is otherwise uncivil to a member of the public), P/C Christie not only unjustly swore at Mr. Jones, but he was also verbally aggressive, causing him at one point to step backwards away from the officer. During the entire interaction, Mr. Jones remained calm and polite, even when he refused to answer the question regarding property ownership. From the perspective of a reasonable, objective observer, there could be absolutely no excuse for P/C Christie's antagonistic and offensive language and tone towards Mr. Jones, and it certainly meets the test for discreditable conduct.

Section 2(1)(a)(xi) of the Code of Conduct addresses misconduct that is disorderly, prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police (OPP). Prior to effecting the arrest, P/C Christie had given no indication of why he was there or why he was asking about ownership of the property, even after Mr. Jones pointed out he didn't know why the officer was there. He focused on one specific question, and when that went unanswered, he effected the arrest without first providing any explanation for his presence or why he was arresting Mr. Jones. At no time during the interaction did P/C Christie reference the incident in August.

There is clear and convincing evidence that P/C Christie was uncivil towards Mr. Jones – his language was patently inappropriate and aggressive. Additionally, I find there is clear and convincing evidence that the interaction itself – the failure to properly explain to Mr. Jones what was happening or why he was being placed under arrest (beyond “theft of hay”), coupled with his rude and belligerent manner – would bring discredit upon the reputation of the OPP. Any dispassionate, reasonable person, fully apprised of the facts, would expect that an officer would behave in a more professional, courteous and restrained manner, particularly since Mr. Jones offered no deliberate provocation from the start and did not appear to know why P/C Christie was even there.

Once he placed Mr. Jones under arrest, P/C Christie seemed to calm down, and his language was no longer confrontational or belligerent. This continued after he realised he was being recorded, and his comment to Mr. Jones about a second officer arriving shortly and him not being in any danger, would suggest he was aware that his earlier language and actions were unwarranted, unacceptable and potentially frightening. I am less impacted by P/C Christie's comments about the GoPro and its battery life – while I understand Mr. Jones may have felt the officer was trying to find out how long the recording would run, there is insufficient evidence to demonstrate that P/C Christie was not simply making conversation while writing up the paperwork. I find it *is* reasonable, however, for Mr. Jones to have apprehension about being fingerprinted by P/C Christie and to have requested another officer, considering P/C Christie's actions towards him.



There were three additional points in the Notice of Hearing allegations that stated –

- *Mr. Franklin made the theft allegation seven weeks prior to Mr. Jones' arrest. Mr. Jones was not aware of the allegation or that he was the subject of an investigation. He was never questioned or afforded the opportunity to provide an explanation and/or the corroborating legal documentation.*
- *Mr. Jones was unjustly arrested, handcuffed and locked in the back of a police cruiser. The encounter, along with the stress of being charged criminally, has caused Mr. Jones considerable anxiety.*
- *On October 25, 2021, almost one month after his arrest and two days before his scheduled court appearance, Mr. Jones received a call from Sgt. Davidson advising him that the charges were no longer proceeding and that his fingerprints would be destroyed.*

These three points are to some extent addressed in the second charge of Unlawful or Unnecessary Exercise of Authority. However, I would agree that P/C Christie's manner and behaviour immediately prior to the arrest – his repeated focus on one question only, and his failure to provide any elaboration to Mr. Jones regarding why he was being arrested, lends itself to the overall discredit brought to the OPP. When Mr. Jones refused to answer P/C Christie, he was given no further information other than he was being arrested for theft of hay, with no reference to the incident in August at all. A reasonable, objective person would surely expect P/C Christie to have behaved more professionally, and to have even offered Mr. Jones an opportunity to respond to the allegation, prior to being arrested, given the contentious nature of the issues between Mr. Jones and Mr. Franklin.

Through his counsel, P/C Christie entered a plea of guilty to Discreditable Conduct. Based on the evidence as described above, I accept his plea and find him guilty of this misconduct.

## **Count 2 – Unlawful or Unnecessary Exercise of Authority**

The Notice of Hearing combines an alleged failure to follow s. 495(2) CC with allegations that P/C Christie's investigation was not "*proper*", resulting in an unlawful and unnecessary arrest. Specifically related to P/C Christie's investigation, the allegations state -

- *The occurrence, as reported, was a civil matter between these two parties. P/C Christie was aware or ought to have been aware of the contentious property-related history between the Jones' and Mr. Franklin. A proper investigation would have afforded both parties the opportunity to provide statements and corroborating legal documentation for review.*
- *P/C Christie arrested Mr. Jones 48 days after Mr. Franklin reported the alleged theft. P/C*

*Christie entered into the investigation on August 11, 2021. P/C Christie took statements from Mr. Franklin and his wife, and then cleared the occurrence as ‘Jones charged accordingly’. P/C Christie had already determined that he was going to charge Mr. Jones. During the ensuing 48 days, P/C Christie took no further investigative steps. P/C Christie did not provide Mr. Jones with an opportunity to respond to the allegation (who, prior to his September 27, 2021, arrest, was not aware of the investigation), and did not interview two independent witnesses until after Mr. Jones had been arrested and charged.*

- *Based on the evidence, P/C Christie’s arrest of Mr. Jones was unnecessary and unlawful, had he conducted a proper and full investigation.*

It was submitted by the prosecution that P/C Christie had no reasonable and probable grounds to arrest Mr. Jones – it was a civil matter and Mr. Jones was ultimately found to have colour of right to the property. P/C Christie could have easily checked this with some simple enquiries. Furthermore, the arrest was not in compliance with s. 495(2) CC – P/C Christie knew it was not in the public interest to arrest Mr. Jones without a warrant, he knew his identity, there was no need to secure evidence, and no need to prevent a continuance of the offence. Mr. Kirsh submitted the arrest was unnecessary and unreasonable in the circumstances.

In his submissions, Mr. Kirsh provided a number of cases that set out the requirements for a finding of misconduct under this section of the Code of Conduct. Per *Pais v. Toronto Police Service Board, 2023 ONCPC 14 - The Commission has previously held that to establish misconduct under s.2(1)(g)(i), two criteria must be established. First, the arrest must be unlawful or unnecessary, and second, it must have been made without good and sufficient cause: see Correa v. Ontario Civilian Police Commission, 2020 ONSC 133 (Div. Ct.) at para. 40, Ardiles and Toronto Police Service, 2016 ONCPC 01 at para 23.*

*In assessing whether the arrest was unlawful or unnecessary, the Hearing Officer must first determine if there are “reasonable and probable grounds” for arrest. An officer must have a subjective belief that there are reasonable grounds, and these grounds must be justified from an objective point of view. A reasonable person placed in the position of the officer must be able to conclude that there were reasonable and probable grounds for the arrest. This framework, set out in R. v. Storrey (1990) 1 S.C.R. 241 at para 17 is frequently applied by the Commission when considering misconduct under s.2(1)(g)(i) (citations removed).*

*Though a finding that an arrest lacks reasonable and probable grounds will be dispositive of whether it was lawful, that would not necessarily result in a finding of misconduct. It must also be established that the arrest was without “good and sufficient cause”. This element is not as precisely defined in the jurisprudence. In Wong, supra at paragraph 27, the Commission noted that an assessment of this element requires a “more nuanced analysis”. The Commission found that an officer acting in good faith will not necessarily satisfy the requirement of good and*

*sufficient cause. The Commission has also held that, depending on the totality of the evidence, a separate analysis of whether an officer had good or sufficient cause to make the arrest is not required, where a finding that an arrest has been unlawful or unnecessary is made.*

Defence counsel submitted that neither the Notice of Hearing or the evidence disputes that P/C Christie had reasonable and probable grounds to make an arrest, and the only deficiency identified was that P/C Christie did not take a statement from Mr. Jones. Mr. Jones had conceded that neither he nor his mother were the owners of the property at the time, and there was no evidence to indicate that P/C Christie was aware of the position taken by OPP Legal. It was submitted that the arrest occurred due to safety concerns, with no evidence presented by the prosecution to challenge those grounds.

I agree with Mr. Girvin that it does not allege in the Notice of Hearing that P/C Christie did not have reasonable grounds for arrest. The Notice of Hearing alleges that it was a civil matter, and that P/C Christie ought to have provided Mr. Jones with the opportunity to provide a statement and legal documentation for review. The Notice of Hearing also alleges that P/C Christie took no action for 48 days and did not interview two witnesses until after he was charged.

I will first deal with the issue of the 48 days and the interview of two witnesses. While the length of time that elapsed was raised by the prosecution in submissions, to show there was no urgency for an arrest, the fact that P/C Christie “*took no further steps*” was not itself raised as a misconduct issue. S/Sgt Davidson testified that P/C Christie was away from work for at least two weeks in August. He stated he addressed the need to complete the investigation with P/C Christie on three occasions, demonstrating that he was aware of the length of time it was taking. To my mind, this is a performance management issue and not a misconduct matter under s. 2(1)(g)(i) of the Code of Conduct. Second, regarding the allegation of when two witnesses were interviewed – this was not raised during the hearing and the General Occurrence report does not indicate when statements were taken. I can make no findings on this point.

In order to find P/C Christie guilty of misconduct, the prosecution needs to establish that there were no reasonable grounds for arrest, both subjectively and objectively. It was submitted by Mr. Kirsh that any grounds P/C Christie may have had, were not objectively reasonable because Mr. Jones had a colour of right to the property. He submitted that under the circumstances, given the history related to the property and the constant property disputes, it was not objectively reasonable to conclude Mr. Jones had no colour of right, and P/C Christie could have ascertained this with some simple enquiries.

In conducting my analysis, I will examine the factors that were raised in the Notice of Hearing against the relevant jurisprudence, namely –

- 1) Unlawful or Unnecessary Arrest
  - Whether there were reasonable and probable grounds
  - The alleged lack of proper investigation (specifically a statement from Mr. Jones)
  - Compliance with s. 495(2) CC
- 2) Good and Sufficient Cause

## **Unlawful or Unnecessary Arrest**

### **Reasonable and Probable Grounds**

As referenced in *Pais v. Toronto Police Service Board, 2023* above, *R v Storrey, 1990 1 S.C.R.* states - *It is not sufficient for the police officer to personally believe that he or she has reasonable and probable grounds to make an arrest. Rather, it must be objectively established that those reasonable and probable grounds did in fact exist. That is to say a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest.*

There is limited evidence before the Tribunal regarding P/C Christie's subjective grounds to arrest and charge Mr. Jones. P/C Christie did not testify, his notes were not provided, there was no duty report tendered and no indication that he was ordered to provide a compelled statement.

The General Occurrence report<sup>5</sup>, entered by P/C Christie on September 10, 2021, stated that Hugh Franklin attended the Campbellford OPP detachment to report an assault and a theft. It stated that Mr. Franklin had power of attorney of the property in question; that Elwood Quinn was the legal owner; that Linda Jones was a tenant and her son Phillip Jones also resided at the property but was not a legal tenant. It stated that Ms. Jones had recently been evicted through proper legal procedure and had been given an extension to vacate from the Provincial Sherrif's office. The report also stated that Phillip Jones had "*recently given out a contract to a local farmer to cultivate hay from the fields on the property without colour of right to do so. Phillip Jones received compensation as per the contract for the hay the local farmer had cultivated from the land*". The report stated that on August 8, 2021, Mr. Franklin and his wife attended the detachment and provided audio statements. It noted "*Franklin also provided several legal documents confirming the eviction of Linda Jones from the residence on the property and his power of attorney rights to the property*", in addition to a video from August 5, 2021, a copy of the contract re: the hay, and the name of two witnesses. This evidence – the statements and legal documents - were not provided to the Tribunal.

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<sup>5</sup> Exhibit 11

Shortly following Mr. Jones' arrest for theft of hay, he can be heard on the GoPro camera recording asking P/C Christie if he has "evidence of this?" P/C Christie responds, "Yes I do". Later in the video, when P/C Christie calls Mr. Jones' lawyer at his request, he can be heard telling the lawyer – "Hay... Uh, through my investigation sir... Well, I'm not at liberty to discuss that right now with you sir, but I'm sure you'll get full disclosure when – because he would like to speak with you." He then handed the phone to Mr. Jones and stepped away.

There was also evidence from S/Sgt Davidson that P/C Christie had sent him a text on October 6, 2021, that stated "You know it was you that asked me to get on that, eh?... And I did. Now I regret it... I knew I'd eventually lose my shit on someone... But like I said, not going to deny anything. Video won't tell the whole story... I had a complaint and I investigated it... Came to a conclusion, is that not what we're supposed to do?" I have considered this text message in the context of both the discreditable conduct and the unlawful exercise of authority misconduct allegations. I find that it suggests that P/C Christie regretted his interaction and behaviour towards Mr. Jones. It is not dispositive, however, of whether he made the arrest absent reasonable and probable grounds.

It was alleged in the Notice of Hearing and also in the prosecution's submissions that this incident was a civil matter. I note, however, that criminal law and civil law are not mutually exclusive. While the matter may appear to be a civil dispute between two parties over the use of, and rights to, property, theft – the taking or converting of something fraudulently and without "colour of right" - is also a criminal offence. It is defined in the Criminal Code as (abbreviated) -

#### *Theft*

*322 (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent*

*(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;*

*(b) to pledge it or deposit it as security;*

*(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or*

*(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.*

#### *Time when theft completed*

*(2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.*

#### *Secrecy*

*(3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.*

The General Occurrence report indicates that Mr. Franklin had power of attorney of the property; that Ms. Jones had recently been evicted and given an extension to vacate; that Mr. Jones had given out a contract to a local farmer to cultivate hay without colour of right to do so, and he had received compensation for it. It noted there were several legal documents confirming the eviction and Mr. Franklin's power of attorney rights, and that four witnesses were interviewed.

It would be considerably easier to determine the grounds if the Tribunal had been provided with Mr. Franklin's evidence. Did he, for example, assert that *he* had planted the hay? Perhaps he stated that the Joneses had no right to farm that property and therefore had no ownership over any crop that subsequently grew there? Mr. Jones' evidence was that the initial 2017 agreement between Ms. Jones and Mr. Quinn allowed her "*full use of the property*". Had this ever changed? What did the various court orders in the subsequent years permit? What did Mr. Franklin's legal documents – those that he provided to P/C Christie – state? The only evidence from Mr. Jones was that he had planted the hay – and it is unknown when – that he and his mother had harvested hay for the past 20 years on the property, and they believed they could continue to do so. If this is the case, considering how contentious the issues were since 2017, what happened the previous year? Had anything changed? Without knowing what information and documents P/C Christie based his grounds on, it is difficult for the Tribunal to assess whether reasonably, he had grounds for the arrest, or whether he required, or ought to have sought, additional information. Absent any evidence to the contrary, I can only conclude that based on the General Occurrence report, P/C Christie subjectively believed he had reasonable and probable grounds with which to charge Mr. Jones for theft.

In considering whether there were objective grounds, I now consider the testimony from the two officers before the Tribunal.

P/C Foster testified that while he was enroute to the property on September 27, 2021, P/C Christie advised him that he had grounds to arrest Mr. Jones and that Mr. Jones was walking towards him. P/C Foster stated he had attended the property previously for calls for service and knew that the Joneses did not own the property, but confirmed he had no evidentiary knowledge of P/C Christie's investigation. P/C Foster confirmed he'd been shown a document by Mr. Jones that prevented Mr. Franklin from attending the property, and that he'd told him he didn't understand it and it didn't make sense to him. As such, P/C Foster's evidence provides little assistance regarding objective grounds for arrest.

S/Sgt Davidson testified that he was aware of the investigation prior to the arrest. He stated he spoke about the investigation to P/C Christie on August 11, 2021, and in early September. He



testified that he received an email from S/Sgt Royer about it (brought to his attention through PSU) on September 23, 2021, and also spoke to P/C Christie on the morning of September 27, 2021. Inspector Martin was notified of P/C Christie's negative interaction with Mr. Jones and enquired the reason for the arrest (note – not the grounds for the charge). On October 4, 2021, Inspector Martin requested a Crown consult on the matter, to determine whether or not there was a reasonable prospect of conviction. On October 6, 2021, (then) Sgt. Davidson was advised that colour of right had been determined by OPP Legal to be in the Joneses' favour. Despite this, on October 18, 2021, (then) Sgt. Davidson wrote an email to the Crown with a synopsis of the event to follow up on the reasonable prospect of conviction. On October 25, 2021, "*after looking at everything and in conversation with other people*", he then decided the Crown consult was not necessary. Almost three weeks after receiving the OPP Legal information from S/Sgt Royer, he contacted Mr. Jones and asked simply if he had planted the hay. When Mr. Jones replied that he had, (then) Sgt. Davidson replied that the charges would be withdrawn.

I find that based on the evidence from S/Sgt Davidson, there were senior members of the detachment who were aware that P/C Christie was investigating the Joneses in relation to criminal allegations. S/Sgt Davidson spoke to P/C Christie about the investigation three times prior to the arrest. S/Sgt Royer had raised it with (then) Sgt. Davidson also in advance of the arrest. The occurrence, cleared as a "Theft" occurrence, had appeared on (then) Sgt. Davidson's task list in mid-September before being returned to P/C Christie for additional work. Additionally, there was evidence that PSU were aware of the investigation, since they brought it to S/Sgt Royer's attention, resulting in his email to (then) Sgt. Davidson on September 23, 2021. There was no evidence that either pre- or post arrest, anyone had challenged P/C Christie on whether he'd had reasonable and probable grounds for a charge of theft. Inspector Martin had enquired about the necessity of the arrest and had requested a Crown consult regarding the charge. S/Sgt. Davidson testified that the Crown consult was to determine whether there was a reasonable prospect of conviction. The arrest was made on September 27, 2021. S/Sgt Davidson testified he received the information from S/Sgt Royer re: OPP Legal on October 6, 2021. Prior to October 25, 2021, there was no indication of the charge being withdrawn in advance of a Crown consult, and no evidence that P/C Christie had been challenged on his grounds for arrest.

It could be said, perhaps, that since OPP Legal arrived at the conclusion that the colour of right belonged to the Joneses, P/C Christie could not have been sufficiently diligent in his investigation. In fact, the prosecution submitted that this demonstrated he could not have had objective grounds.

S/Sgt Davidson testified that he decided to withdraw the charge based on OPP Legal's information that he obtained from S/Sgt Royer, in addition to looking at the occurrence, the statements and entries. I find, however, that the information from OPP Legal played a significant

role in S/Sgt Davidson's decision to withdraw the charge. Even though he still drafted an email for a Crown consult, he ultimately decided it was not necessary. He took no further investigative steps, and the only "new" information that led to his decision was that which was provided to him via S/Sgt Royer. Sgt. Davidson simply asked Mr. Jones if he'd planted the hay before advising him he would withdraw the charge.

The OPP Legal information was relayed to (then) Sgt Davidson on October 6, 2021, nine days after P/C Christie had made his arrest. He received it at least second hand - it is unknown if the information from OPP Legal went directly to S/Sgt Royer or via anyone else first. Additionally, S/Sgt Davidson testified that the information had been obtained by OPP Legal because of a separate PSU investigation. The details of this investigation were not provided, nor was the extent of PSU's involvement into P/C Christie's matter prior to his misconduct complaint. There was scant information regarding how OPP Legal had arrived at their position regarding colour of right. S/Sgt Davidson testified that he did not recall viewing documents relating to the ongoing disputes and the Joneses' eviction, but stated they were provided to OPP Legal, per S/Sgt Royer. Yet S/Sgt Davidson also testified that the OPP Legal position had arisen as the result of a separate PSU investigation. It was unclear whether OPP Legal had received any information beyond that which was available to P/C Christie, what particulars or documents had been obtained from the separate PSU investigation involving the Joneses, or even whether it was legal advice, or a legal interpretation. A Crown consult regarding the charge was never obtained and according to the evidence, Mr. Jones was never asked for a statement or to provide documents beyond being asked if he had planted the hay in question. Furthermore, there was no evidence to show that P/C Christie knew, or ought to have known, whether OPP Legal was being consulted.

The fact that OPP Legal subsequently determined that the colour of right belonged to the Joneses, does not necessarily mean that P/C Christie did not have reasonable grounds at the time of the arrest. In *R. v. Boston*, 2014 ONSC 12 the Court found that - *It is well established that the statutory and constitutional requirement of "reasonable and probable grounds" for an arrest can be satisfied by hearsay information from a civilian source or from a police source. See: Eccles v. Bourque (1974), 19 C.C.C. (2d) 129 (S.C.C.), at 133; R. v. Collins (1987), 33 C.C.C. (3d) 1 (S.C.C.) at paras. 25-6; R. v. Debot (1989), 52 C.C.C. (3d) 193 (S.C.C.), at 214 - 215. More importantly for the present case, it is also well established that the information relied on to make an arrest may turn out to be inaccurate or unreliable, after further investigation. Indeed, the arrested person may be entirely innocent. Where the police rely on information that turns out to be false or unreliable, the lawfulness of the antecedent arrest depends on whether it was reasonable, in the circumstances that existed at the time, to rely on the particular information and/or the particular source.*

Without knowing exactly what information P/C Christie based his grounds on, specifically, what

information and documents he was provided by Mr. Franklin and the other witnesses, it is difficult for this Tribunal to make a finding regarding whether there were objectively reasonable and probable grounds for the arrest on September 27, 2021. However, I note that there were several layers of detachment command staff who *did* have access to this information, including, presumably, PSU. The evidence also indicates that while Inspector Martin queried the need for an arrest, and requested a consult on whether there was a reasonable prospect of conviction, P/C Christie was not asked or challenged about whether he'd had reasonable grounds to lay a charge in the first place. Indeed, after receiving the information from S/Sgt Royer and deciding to withdraw the charge, (then) Sgt. Davidson wrote in his Supplementary Occurrence Report – *“the crux of the investigation was reliant on the colour of right residing with the complainant which has since been found to be erroneous”*. He received the information re: OPP Legal on October 6, 2021, but notified Mr. Jones of his decision to withdraw the charge on October 25, 2021. There was no information on what transpired with Mr. Franklin following this.

#### Proper Investigation - Statement from Mr. Jones

It was submitted by the prosecution that an officer may be required to take additional investigative steps for an arrest to be objectively established on reasonable and probable grounds. Mr. Kirsh cited *Suleiman v. Ottawa Police Service and Lord, 2011 ONCPC*, in which the officer arrested an accused for being in breach of an undertaking without first confirming an excluded boundary condition. In *R v. Witter 2008 Canlii 63159 ONSC* an officer arrested an accused for driving while suspended, without confirming issuance of the suspension first. In *Carr v Ottawa Police Services Board, 2017 ONSC*, officers arrested a sub-tenant of a residence under the *Trespass to Property Act* without first confirming her rights. *R. v. Boston, 2014 ONSC* involved an accused who was arrested for being in breach of bail conditions for charges that had been resolved two weeks' prior. In that case, the Court quoted *Storrey* and also *Dumbell v. Roberts, [1944] 1 All E.R. 326 at 329 (C.A.)*:

*The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called on before acting to have anything like a prima facie case for conviction; but the duty of making such inquiry as the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable, does rest on them; for to shut your eyes to the obvious is not to act reasonably.*

I will note that all four of the cases above involve an officer who dealt with a person believed to be found actually committing an offence. This is not the same as P/C Christie's matter. As indicated in the General Occurrence report, P/C Christie obtained statements and collected documentary evidence to form his grounds prior to making his arrest of Mr. Jones.

The prosecution submitted that specifically, P/C Christie ought to have also taken a statement from Mr. Jones. The Notice of Hearing states that taking a statement from both sides would have resulted in a “*proper investigation*”, which would have then avoided an unnecessary and unlawful arrest. S/Sgt Davidson testified that he would have expected there to be a conversation with the accused prior to an arrest, although stated “*it doesn’t happen in every occurrence*”, and that in an incident where colour of right is at question “*you’d want to dig a bit deeper*” and obtain a statement from both sides.

I agree that it may well be prudent, or necessary, to speak to both sides in a dispute such as this, in order to determine colour of right. However, S/Sgt Davidson relied on S/Sgt Royer’s information when he withdrew the charge, without asking Mr. Jones about his colour of right (beyond if he’d planted the hay). Nor did (then) Sgt. Davidson direct P/C Christie to speak to Mr. Jones, either before or following the arrest. The only direction provided was for a Crown consult on whether there was a reasonable prospect of conviction.

I may have been more persuaded by this point had it been demonstrated that Mr. Jones actually provided, or could provide, refuting evidence that rebutted Mr. Franklin’s allegation; or evidence that OPP Legal had considered information that originated from Mr. Jones. However, the evidence provided to the Tribunal was that Mr. Jones was only ever asked one question by (then) Sgt. Davidson in regards to the incident, and it related to only whether he had planted the hay. As an aside, I note that hay is not an annual crop, and the timing of when Mr. Jones planted the hay – whether it pre-dated the 2017 agreement with Mr. Quinn – was not ever canvassed, by anyone. The information relied upon by OPP Legal, and (then) Sgt. Davidson, was not disclosed, other than S/Sgt. Davidson stating OPP Legal had been provided information from the incident. There was no clear evidence that *anyone* obtained information from Mr. Jones pertaining to his, or his mother’s, property rights.

Beyond Mr. Jones’ testimony that his mother had harvested hay for the past 20 years and he believed they could still do so, there was no clear evidence to show that interviewing Mr. Jones would have negated any reasonable and probable grounds that P/C Christie may have had. In cross examination, Mr. Jones stated he had an interim court decision that required everyone maintain status quo regarding the property and not make any changes to it. P/C Foster’s evidence was that the document was to keep the property owner off the property; he also stated that he had looked at it and it didn’t make sense to him. There was no further information regarding this paperwork.

The Court of Appeal addressed the issue of a negligent investigation and the interview of an accused in *Tremblay v. Ottawa (Police Services Board), 2018 ONCA*. In this case, Tremblay and his spouse were involved in a dispute with their neighbours, regarding a drainage pipe Tremblay had installed allegedly causing flooding in their homes. Six neighbours brought a civil

suit against Tremblay, and some claimed that Tremblay subsequently engaged in intimidating behaviour toward them and their families. Ottawa Police Service (OPS) Sgt. Aylen arrested and charged Tremblay, who was acquitted of intimidation and of criminal harassment, but found guilty of mischief. His mischief conviction was subsequently overturned by the Court of Appeal. Tremblay then sued and the trial judge found Sgt. Aylen and the OPS liable for negligent investigation, false arrest, unlawful detention, unlawful imprisonment and various *Charter* breaches. In overturning the finding, the Court of Appeal found -

*[60] Drawing largely from this court's decision in 495793 Ontario Ltd. v. Barclay (2016), 2016 ONCA 656 (CanLII), 132 O.R. (3d) 241 (C.A.), the trial judge correctly identified the legal principles that apply to consideration of the tort of negligent investigation in the context of laying charges, including the following:*

- The appropriate standard of care for the tort of negligent investigation is that of the reasonable police officer in similar circumstances.*
- In the laying of charges, the reasonable standard is informed by the presence of reasonable and probable grounds to believe the suspect has committed the offence.*
- This standard does not require police to establish a prima facie case for conviction.*
- The police are not required to evaluate the evidence to a legal standard or make legal judgments. That is the task of prosecutors, defence lawyers and judges.*
- A police officer is not required to exhaust all possible routes of investigation or inquiry, interview all potential witnesses prior to arrest, or to obtain the suspect's version of events or otherwise establish there is no valid defence before being able to form reasonable and probable grounds.*

*[66] More recently, in Barclay, this court reversed a decision that followed an approach similar to that adopted by the trial judge in this case. Barclay involved an auto theft investigation. Notwithstanding the absence of any urgent circumstances, at para. 84, this court pointed out "the trial judge's criticism of the police for failing to follow-up on, or take steps to become aware of, possible innocent explanations ignores the established jurisprudence that police are not required to exhaust all avenues of investigation, establish that an accused has no defence, or even obtain an accused's version of events."*

*[70] One red flag the trial judge emphasized was Sgt. Aylen's failure to personally interview Tremblay or Mongrain, despite having recognized at the outset the principle that police are not required to obtain the suspect's version of events or otherwise establish there is no valid defence. An apt illustration is Collins v. Brantford Police Services Board (2001), 2001 CanLII 4190 (ONCA), 151 O.A.C. 152, 158 C.C.C. (3d) 405, which also involved a neighbour dispute. The police officer in that case arrested Collins based on his neighbours' complaints, without first interviewing him. As he was being arrested, Collins began to tell his side of the story, but the*



police officer cut him off, saying that he would have an opportunity to do so later. This court reversed the finding of liability for the arrest in that case.

[71] Moreover, the trial judge did not note Sgt. Aylen's testimony that police often choose not to speak with the subject of a complaint in a neighbour dispute, for fear of escalating it.

[72] The jurisprudence is clear that the trial judge erred by concluding Sgt. Aylen's failure to interview Tremblay and Mongrain was negligent.

[80] The question in assessing whether an arrest was authorized and is therefore lawful is not whether the officer could have done something other than arrest. Rather, the question is: did the officer have grounds to arrest?: *R. v. Carelse-Brown*, 2016 ONCA 943, 35 C.R. (7th) 377. The fact that the trial judge views other options as preferable is not determinative of whether Sgt. Aylen breached the standard of care. The Supreme Court emphasized this in *Hill*, at para. 73:

*This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made — circumstances that may include urgency and deficiencies of information.*

P/C Christie is not charged under the civil tort of negligent investigation, nor is he charged with neglect of duty under the *PSA*. However, I have quoted from *Tremblay* at length given that P/C Christie's Notice of Hearing twice states he did not conduct a "proper" investigation. A "proper" investigation was not defined during P/C Christie's hearing, and the test for a lawful arrest is not whether he should have interviewed Mr. Jones or not, but whether – as illustrated by the case law above – P/C Christie had reasonable grounds.

To summarise the previous eight pages of analysis - the prosecution bears the burden of establishing that, at the time of the arrest, P/C Christie did not have subjective reasonable and probable grounds for the charge, and further, that *objectively*, reasonable and probable grounds did not exist. That is to say a reasonable person, standing in the shoes of P/C Christie, would not have believed that reasonable and probable grounds existed to make the arrest.



I accept from the evidence presented to the Tribunal, that at the time of the incident, Mr. Jones was not a legal tenant – nor had he been the property owner - although he was residing at the property. Mr. Franklin was legally acting on behalf of the property owner, Mr. Quinn. There was apparently an eviction notice in effect for Ms. Jones, although additional time had been granted for her departure. Mr. Jones had entered into a contract with Mr. O'Brien to harvest hay on the property. On the day of baling, Mr. Franklin arrived at the property and told Mr. O'Brien to stop harvesting hay “*or face charges*”. Mr. Franklin subsequently attended the OPP detachment alleging theft and assault. He turned over a number of documents to P/C Christie who obtained statements from Mr. Franklin, his wife, Mr. O'Brien and another witness. Mr. Franklin subsequently made arrangements to attend the property with police on September 27, 2021 to collect the hay.

The only evidence before the Tribunal to challenge the grounds for arrest was that Mr. Jones testified that his mother had been harvesting hay for the previous 20 years; under cross examination Mr. Jones referenced an interim court order that kept everything “*status quo*”, there was a contentious history between the parties, and additionally, S/Sgt Royer told (then) Sgt. Davidson that OPP Legal had advised that the Joneses had colour of right to the property. Aside from this, there is no cogent or weighty evidence to show that interviewing Mr. Jones would have negated any reasonable and probable grounds that P/C Christie may have had. This is not to say that Mr. Jones would *not* have been able to show proof of colour of right – but rather that beyond his assertion, evidence of this was not provided to the Tribunal. The “proof” that contradicted any grounds that P/C Christie may have had, was information provided by OPP Legal, second hand to (then) Sgt. Davidson.

To repeat, without knowing what documents and information P/C Christie obtained from Mr. Franklin, it is difficult to assess whether the grounds upon which P/C Christie laid the charge were either subjectively or objectively reasonable. Jurisprudence has shown there is no requirement on police to evaluate evidence to a legal standard or make legal judgments. I have found that there was no evidence tendered regarding how OPP Legal had arrived at their recommendation regarding colour of right; or whether OPP Legal had received any information beyond that which was available to P/C Christie. Furthermore, OPP Legal’s interpretation was only obtained after P/C Christie made the arrest – and there was no evidence that he was aware of such information on September 27, 2021.

Additionally, regarding the allegation that P/C Christie did not conduct a “proper” investigation by not interviewing Mr. Jones, case law has determined that police are *not required to exhaust all possible routes of investigation or inquiry, interview all potential witnesses prior to arrest, or to obtain the suspect’s version of events or otherwise establish there is no valid defence before*

*being able to form reasonable and probable grounds*<sup>6</sup>. I will repeat that it may have been prudent for P/C Christie to obtain a statement from Mr. Jones prior to the arrest. But it has not been demonstrated that he *required* this in order to have objectively reasonable grounds.

Given the above, I do not find that the prosecution has provided clear and convincing evidence that there were no objective or subjective reasonable grounds, or that a statement from Mr. Jones would have negated such grounds, for arrest.

### Compliance with Section 495(2) CC

The prosecution also submitted that P/C Christie's arrest was unlawful because of noncompliance with subsection 495(2) CC. Mr. Kirsh stated that the only conclusion to draw based on the evidence, was that P/C Christie knew it was not in public interest to arrest Mr. Jones without a warrant. P/C Christie knew his identity, there was no need to secure evidence and no need to prevent a continuance of the offence.

Section 495 of the Criminal Code states –

- (1) *A peace officer may arrest without warrant*
  - (a) *a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;*
  - (b) *a person whom he finds committing a criminal offence; or*
  - (c) *a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.*

### *Limitation*

- (2) *A peace officer shall not arrest a person without warrant for*
  - (a) *an indictable offence mentioned in section 553,*
  - (b) *an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or*
  - (c) *an offence punishable on summary conviction,*  
*in any case where*
  - (d) *he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to*
    - (i) *establish the identity of the person,*
    - (ii) *secure or preserve evidence of or relating to the offence, or*
    - (iii) *prevent the continuation or repetition of the offence or the commission of another offence,*

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<sup>6</sup> *Tremblay v. Ottawa (Police Services Board)*, 2018 ONCA

may be satisfied without so arresting the person, and  
(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

#### *Consequences of arrest without warrant*

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of:

- (a) any proceedings under this or any other Act of Parliament; and
- (b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

Theft Under \$5000 s.334(b) CC is a hybrid offence, meaning it may be prosecuted both by indictment and summarily. As such, it meets the description set out in s. 495(2)(b) CC and is subject to the limitation of that section.

The Notice of Hearing states -

*The Criminal Code states that an officer, in determining whether to arrest, shall consider the need to: secure a court appearance; secure and preserve evidence; establish identity; prevent continuance of the offence; protect life and property; and prevent breach of the peace. In this particular situation, none of the above mandatory considerations were a factor.*

Again, the prosecution bears the onus of proving the misconduct. In *Collins v. Brantford Police Services, 2001 CanLII 4190 (ON CA)*, involving a neighbour dispute in which one neighbour sprayed another with water from a hose, the Court of Appeal addressed the issue of s. 495(2) CC, and the consideration of the public interest, stating -

*[14] The real question in this case turned on the limitation on the arrest power in s. 495(2). I point out, however, that by virtue of s. 495(3), the burden of proving that the arrest was unlawful because of non-compliance with s. 495(2) was on the plaintiff. Thus, in the words of s. 495(2), it was for the plaintiff to establish that Constable Sawkins believed on reasonable grounds that the public interest, having regard to all the circumstances, could be satisfied without arresting him. The trial judge and the Divisional Court judge both appeared to consider that this issue was determined by the finding that the arrest was not necessary to prevent the continuation or repetition of the offence or the commission of another offence within the meaning of s. 495(2)(d)(iii). In my view, they were in error. **The decision not to make a warrantless arrest for a hybrid offence must be made in the public interest having regard to all of the circumstances. The factors enumerated in s. 495(2)(d) are only some, albeit the most important, of the factors to which the officer's attention is expressly directed. The overriding consideration remains the public interest.** In my view, the plaintiff did not meet*

*his onus of establishing that the public interest could have been satisfied without an arrest (emphasis added).*

The Court's finding was reiterated in *R. v Gill*, 2015 ONSC 7764 Canlii in which the Divisional Court distinguished the presumption of acting lawfully as applying only to criminal or federal law under s.495(3)(a), and not to civil matters. More recently, in *Tremblay v. Ottawa (Police Services Board)*, 2018 ONCA, the Court of Appeal found -

*[93] Section 495(2) places a duty on a police officer who has grounds for arrest under s. 495(1), to not arrest where he or she believes on reasonable grounds that the public interest may be satisfied without arresting the person. The phrase "believes on reasonable grounds" makes clear that the test for applying the limitation in s. 495(2) is both subjective and objective. The police officer must believe that the public interest can be satisfied without arrest, and that subjective belief must be objectively reasonable. Both components must be satisfied. **To be clear, it is not enough for a person alleging a violation of s. 495(2) to establish that, objectively, the public interest can be satisfied without an arrest. The person must also establish the police officer believed the public interest could be satisfied without an arrest but went ahead and made the arrest in any event** (emphasis added).*

*[94] The trial judge set out the correct test for s. 495(2), citing Collins. She said, at para. 86, that the respondents "have to prove that Sergeant Aylen, Officer Aspilaire, and Officer Ryan believed on reasonable grounds that the public interest, having regard to all of the circumstances, could be satisfied without arresting Mr. Tremblay". It is not clear that she found the subjective component of the test was satisfied. She did say at para. 87, "I am satisfied that, not only could the public interest have been satisfied without Mr. Tremblay being arrested, but also, Sergeant Aylen realized that at the time".*

*[95] Apart from this passing comment about what Sgt. Aylen realized at the time, her entire rationale for finding s. 495(2) was violated relates to the objective component of the test. If the comment was intended to be a factual finding, it is a palpable error. The trial judge set out no evidentiary support for it, nor could she have, as the record contained none. As I noted earlier, the alleged application of s. 495(2) was never put to Sgt. Aylen.*

Thus, not only does the prosecution bear the burden of proving that objectively, the public interest could have been satisfied without Mr. Jones' arrest, but it must also establish that P/C Christie believed the public interest could be satisfied without an arrest, and he went ahead and made the arrest in any event.

The Notice of Hearing misstates what s. 495(2) CC actually says, by leaving out "*prevent... the commission of another offence*" and adding, "*protect life and property; and prevent breach of*

*the peace*". In my analysis I will rely on the wording of the Criminal Code.

In his testimony, S/Sgt Davidson stated that there are various methods by which a person may be charged with a criminal offence (Form 10 Undertaking, Form 9 appearance notice or a summons). He noted that the Form 10 Undertaking "*enables an officer to place an accused on conditions to protect the safety of a victim or witness*".

S/Sgt Davidson testified that on September 27, 2021, P/C Christie advised him of his interaction with Mr. Jones. S/Sgt. Davidson stated that he informed the Detachment Commander, Inspector Martin, who asked (then) Sgt. Davidson to ascertain the need for Mr. Jones' arrest. S/Sgt Davidson testified that P/C Christie told him that "*he'd had safety concerns for the witness and victim, saying he was aware Mr. Jones had previously assaulted Mr. Franklin and wanted conditions to protect the witness*".

The Form 10 Undertaking<sup>7</sup> was tendered as an exhibit. Section 5 was marked "Additional Conditions". In addition to notifying P/C Christie of any change in address, subsection d) was completed as "*You must not communicate, directly or indirectly, with Hugh Franklin, Terri Quinn, David O'Brein (sic), Jennifer Neggars except in accordance with the following conditions: none.*

As noted above, s. 334 CC Theft Under \$5000 is a hybrid offence and meets s.495(1)(a) and also s.495(2)(b) CC. With regards to compliance with s.495(2) CC, the Notice of Hearing stated that "*In this particular situation, none of the above mandatory considerations were a factor*". While I accept that Mr. Jones' identity had been established, respectfully, I know nothing of Mr. Jones' background, whether he has a criminal record, whether he has previously failed to attend court, what type of interactions he previously had with Mr. Franklin, and whether P/C Christie's concerns were objectively reasonable in the circumstances. Mr. Jones himself testified that he had started wearing a GoPro camera because things "*had become so contentious and at times potentially violent, especially surrounding Mr. Franklin's attendances*". The reason for police attendance on September 27, 2021, was because Mr. Franklin planned to attend the property and wanted police present to keep the peace. Given that the evidence indicated that there had been numerous calls for service regarding the ongoing neighbour dispute, some evidence showing previous interactions or CPIC records pertaining to the involved parties might have been helpful.

The only subjective component the Tribunal has, is S/Sgt Davidson's testimony that P/C Christie had safety concerns for the witness and victim, apparently based on a previous assault by Mr. Jones on Mr. Franklin. There was no further evidence to support or contradict this point.

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<sup>7</sup> Exhibit 10

In *Tremblay*, the Court of Appeal found -

*[96] More importantly, the only conclusion that could be drawn from the evidence was that Sgt. Aylen believed the public interest required Tremblay be placed under certain conditions, including conditions prohibiting him from possessing any weapons, and ordering that he have no communication with any member of the Perry and Huppé family. It was necessary that Tremblay be arrested to make him subject to these conditions, and these conditions were included in the undertaking upon which Tremblay was released.*

*[97] As, on the record, it could not be found that Sgt. Aylen believed on reasonable grounds that the public interest could be satisfied without arresting Tremblay, the trial judge erred in finding s. 495(2) was violated.*

*[102] I am satisfied that, at a minimum, s. 495(3)(b) requires that an alleged violation of s. 495(2) be directly put to the police officer who made the arrest. It was not put to Sgt. Aylen in this case.*

I find myself in a similar position. P/C Christie was asked at the time, why he arrested Mr. Jones, and he provided a response. There is no evidence before the Tribunal to refute his reason. Specifically, I note that S/Sgt Davidson provided this evidence in his testimony in chief. It was not questioned by Mr. Jones or defence counsel in cross examination. (I note, however, that following S/Sgt. Davidson's testimony, and immediately prior to submissions, defence counsel confirmed S/Sgt Davidson's evidence on this point. The prosecution had no comment. Mr. Jones stated, "I don't recall that happening").

Again, the jurisprudence states - *To be clear, it is not enough for a person alleging a violation of s. 495(2) to establish that, objectively, the public interest can be satisfied without an arrest. The person must also establish the police officer believed the public interest could be satisfied without an arrest but went ahead and made the arrest in any event*<sup>8</sup>. There is no clear and convincing evidence before me to show that P/C Christie *knew* it was not in the public interest to arrest Mr. Jones. In fact, there was no evidence to show that *objectively*, there could be no concerns about repetition of the offence or the commission of another offence. Consequently, I do not find this point has been met.

### Good and Sufficient Cause

The section of the Code of Conduct under which P/C Christie was charged, reads –

*(g) Unlawful or Unnecessary Exercise of Authority, in that he or she,*

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<sup>8</sup> *Tremblay v. Ottawa (Police Services Board)*, 2018 ONCA



*(i) without good and sufficient cause makes an unlawful or unnecessary arrest,*

I interpret this as stating that an unlawful or unnecessary arrest, made without good and sufficient cause, is a misconduct offence. In other words, if an arrest is found to be unnecessary or unlawful, it may not meet the threshold for misconduct if it is established the arrest was made with good and sufficient cause. As the Commission noted in *Wowchuk & Bernst v. Thunder Bay Police Service, 2013 ONCPC - (1) Was the arrest unlawful or unnecessary? and (2) if so, was there good and sufficient cause?* (emphasis added).

Having established that the evidence is not clear and convincing enough to prove that the arrest was unlawful, I do not believe there is a requirement to assess whether it was done without good and sufficient cause.

However, the prosecution also submitted that even if the arrest was lawful, it was still unnecessary. Mr. Kirsh submitted there was no need to charge Mr. Jones that day, and just because an officer may have grounds, doesn't mean they should arrest, or that an arrest is necessary. He submitted P/C Christie did not need to place Mr. Jones in handcuffs or in the cruiser, especially given the way P/C Christie had initially reacted. He stated that subjecting someone to these circumstances was not necessary or reasonable.

Mr. Kirsh also submitted *Constable John B. Burgess and the St. Thomas Police Force, 1989 ONCPC* and *Batista v. Smith and Ottawa Police Service, 2007 ONCPC*, which both dealt with section 2(g)(ii) (unnecessary force) and found the word "unnecessary" does not mean "not absolutely essential" but rather means something closer to "unreasonable under the circumstances" considering the other options that were in fact available.

I have referred again to *Pais v. Toronto Police Service Board, 2023 ONCPC 14* regarding jurisprudence on this section of the Code of Conduct, and I note that while it states, in relation to arrest - *reasonable and probable grounds will be dispositive of whether it was lawful*, it is silent on the issue of an arrest being "unnecessary". I do not have any jurisprudence with which to assess whether an arrest that is lawful, but *unnecessary*, constitutes misconduct. The evidence shows that P/C Christie arrested Mr. Jones so that he could place him on conditions for safety purposes. I accept this was his subjective reasoning, and it was not challenged by any contradictory evidence.

In summary, I find that there is a lack of clear and convincing evidence that P/C Christie's arrest of Mr. Jones was an Unlawful or Unnecessary Exercise of Authority, in that he without good and sufficient cause did make an unlawful or unnecessary arrest. I wish to be clear that this finding does *not* mean that the arrest was justified. Certainly, the entire incident was far from perfect and P/C Christie's conduct was obviously discreditable. But the prosecution bore the onus to

prove, on clear and convincing evidence, that P/C Christie did not have reasonable and probable grounds, both subjectively and objectively, to make the arrest. A determination regarding misconduct of an unlawful or unnecessary arrest requires an examination of the events and information that led to the arrest, to determine whether there were, or were not, reasonable grounds. In the absence of the evidence that P/C Christie relied upon, and the absence of the information OPP Legal obtained and relied upon, the Tribunal cannot make an informed finding in this respect.

I find that there is not clear and convincing evidence regarding this allegation, and I consequently find P/C Christie not guilty of Unlawful or Unnecessary Exercise of Authority, s. 2(1)(g)(i) of the Code of Conduct.

## **Conclusion**

The events that unfolded on September 27, 2021, were entirely of P/C Christie's own making and it is likely that he would not have faced misconduct charges had he behaved more professionally and courteously towards Mr. Jones. There is no excuse for the ill mannered and belligerent attitude that he took towards Mr. Jones on that day, and Mr. Jones was justifiably shaken by the incident. This is not how OPP officers are expected to behave. He was aggressive and confrontational from the outset of the incident and his language was rude and intimidating. There is no question this behaviour, when considered by a reasonable person apprised of the facts, would be considered discreditable.

While not mandatory in policy or law, I find that as a matter of courtesy and professionalism, P/C Christie ought to have provided more information to Mr. Jones regarding the reasons for his arrest. His repeated, singular question over whether Mr. Jones owned the property, was not clarified for Mr. Jones or explained why it mattered. When Mr. Jones refused to answer the way P/C Christie appeared to want, he was given no further information other than he was being arrested for theft of hay. Again, this is not how OPP officers are expected to act. Given the time that had passed since the incident, it would be reasonable to expect that P/C Christie would have provided some elaboration on the charge. But beyond telling Mr. Jones he was under arrest for theft of hay, he made no reference to the August incident at all. This too, lends itself to the finding of Discreditable Conduct.

With regards to the allegation of Unlawful or Unnecessary Exercise of Authority, the Notice of Hearing alleged that *P/C Christie's arrest of Mr. Jones was unnecessary and unlawful, had he conducted a proper and full investigation*. To a large extent, the allegations focused on the failure to interview Mr. Jones and a contravention of s.495 CC. To prove this allegation, the prosecution required clear and convincing evidence that subjectively and objectively, reasonable grounds did not exist for the arrest. In my reasons above, I have found that the evidence was not

sufficiently clear or convincing to meet the required burden of proof.

My finding in this respect does not mean that it has been proven that the arrest was lawful. It means that the burden of proof was not met with respect to the misconduct allegation. I do not know what P/C Christie relied upon to form his grounds at the time of arrest, other than he had witness statements and legal documentation provided by Mr. Franklin. I equally do not know what OPP Legal relied upon, when contradictory information was provided through S/Sgt Royer to (then) Sgt. Davidson. Certainly, the incident was far from ideal – it is likely that a different officer would have handled it in a very different way. There was evidence before the Tribunal that over the course of the neighbour dispute, both sides had faced charges, criminal and provincial, both had seen charges dropped, and there had been *several calls to the OPP and appearances in many different courts, with various court orders granted on either side*<sup>9</sup>. With the benefit of hindsight, it is obvious that the situation should have been managed differently.

Based on my findings above, the evidence is clear that P/C Christie's behaviour and language on that day constituted discreditable conduct. It is less clear that his decision to arrest and charge Mr. Jones, and place him on conditions, was misconduct under the *Police Services Act*.

#### **PART IV: DECISION**

Based on clear and convincing evidence, I find P/C Christie guilty of Discreditable Conduct, contrary to Section 2(1)(a)(xi) (and inclusive of Section 2(1)(a)(v)), of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

I find P/C Christie not guilty of Unlawful or Unnecessary Exercise of Authority, contrary to Section 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.



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Melissa Barron  
Superintendent  
OPP Adjudicator

Date electronically delivered: October 31, 2023

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<sup>9</sup> Mr. Jones' testimony in chief – page 6

## Appendix “A”

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 2: Delegation – Adjudicator, Superintendent Barron
- Exhibit 3: Designation – Prosecutor, Inspector Doonan
- Exhibit 4: Designation – Prosecutor, Inspector Fournier
- Exhibit 5: Delegation All Officers
- Exhibit 6: Designation – Prosecutor, Inspector Bertram
- Exhibit 7: Designation – Prosecutor, Inspector Vickers
- Exhibit 8: Designation – Prosecutor, Mr. Jason Kirsh
- Exhibit 9: Copy of GoPro camera recording
- Exhibit 10: Copy of Mr. Jones’ Form 10 release
- Exhibit 11: General and Supplementary Occurrence reports
- Prosecution Book of Authorities
  - *Pais v. Toronto Police Service Board, 2023 ONCPC 14*
  - *R v Storrey , 1990 1 S.C.R. 241 - 1990 CarswellOnt 78*
  - *R. v. Boston, 2014 ONSC 4457*
  - *R. v. Witter, 2008 CanLII 63159 (ON SC)*
  - *Suleiman and Ottawa Police Service Board, 2011 ONCPC 8*
  - *Collins v Brantford Police Services Board, 2001 ONCA*
  - *R V Gill, 2015 ONSC 7764*
  - *Tremblay v Ottawa Police Services Board, 2018 ONCA 497*
  - *Carr v Ottawa Police Services Board, 2017, ONSC 4331*
  - *Burgess and St Thomas Police Service, 1989 CanLII 6725*
  - *Batista v. Smith and Ottawa Police Service, 2007 ONCPC 6*
  - *R. v. Simpson 2015, SCC*
- Defence Book of Authorities
  - *Santiago v. Peel Regional Police, 2021 ONCPC 4*
  - *Rose, Arcand, Liburd, Correa, Fuller v. Toronto Police Service and Adam Maclsaac and Office of the Independent Police Review Director, 2018 ONCPC 2*